Within ten days of March 14, 1966, petitioner asked the clerk of the local board what he could do about his classification. He was told, in effect, nothing could be done. No written notice of appeal was given within the ten day period following the last placement in Class 1-A.

On March 28, 1966, petitioner was ordered to report for physical examination on April 27, 1966; which he did; and on May 5, 1966 he was declared acceptable. On June 9, 1966 petitioner received current information questionnaire, which he returned on June 16, 1966. June 27, 1966 he was ordered to report for induction on July 28, 1966. After request by petitioner, on July 12, 1966, the local board sent a letter, advising that he would be given a chance to appear on July 18, 1966.

On July 18, 1966, petitioner appeared in person and presented a letter to the effect that he was the only son in a family with his people dependent upon him and "I am conscientious objector to war, to aid in it in any way." July 19, 1966 board sent letter declining to reopen his classification.

July 22, 1966, the board furnished petitioner with SSS Form 150 (special form for conscientious objectors), which was completed and returned to board on July 26, 1966; on this same date the board notified petitioner that they declined to request authority to reopen his classification and that he was expected to report for induction on July 28, 1966.

The clerk of the local board and the petitioner were the only witnesses for both parties in the District Court. The evidence offered by each side was in most respects the same, and in no event was the testimony of either witness challenged as to any material fact.

No explanation was offered by the government about the alleged improper advice to the registrant. No explanation was offered by the defendant why he had not followed the normal procedures, except that in effect, he had relied upon the advice of the clerk of the local board that nothing could be done. Petitioner did not explain why he had never been explicit in the past with reference to beliefs that might have qualified him as a conscientious objctor, i.e. late crystalization of concepts with added maturity or as the result of the need to think through his situation when induction became imminent.

The United States Court of Appeals rejected the petitioner's position in a per curiam opinion, relying on 32 C.F.R. § 1625.2(b) and *United States* v. *Al-Majeid Muhammad,* 364 F. 2d 223 (4 Cir. 1966).

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the Court of Appeals has decided important questions of Federal law which have not been but should be settled by this Court; because some of its holdings conflict with decisions of other Courts of Appeals, and appear to conflict with applicable decisions of this Court.

I.

There is a direct conflict between the statute 50 U.S.C. App. § 456(j), which granted appellate rights both regular and special to all conscientious objector claimants and the regulation which sought to deny these rights in the case of claims asserted after an order to report for induction. 32 C.F.R. § 1625.2; Appendix, *infra,* p. 5a. The Fourth Circuit has consistently held that the regulation is binding as to time, *United States*

v. *Al-Majeid Muhammed,* 364 F.2d 224 (4th Cir., 1966), cited in the per curiam opinion of the United States Court of Appeals. It is conceded that this reflects the majority view, but there is some minority opinion that there is no time limitation upon the rights granted by the statute. *United States* v. *Underwood,* 151 F. Supp. 874, 876 (E.D. Pa. 1955); *United States* v. *Crawford,* 119 F. Supp. 729 (N.D. Calif. 1954).

As District Judge Gainey (now Third Circuit Judge) held in Underwood:

> "It is plain that a person meeting the conditions of the above section of the Act is not to be subjected to combatant training and service. This privilege is not to be defeated by procedural regulation. No where does it provide that unless the registrant makes his claim before the notice of induction, he thereafter waives his right to the privilege. Had Congress so indicated it would have set forth such intention in unmistakable terms."
>
> 151 F. Supp. at 876.

This Court should resolve the conflict between the Circuits by holding that a Selective Service regulation which is "out of harmony with the statute is a mere nullity". *Manhatten General Equipment Company* v. *Commissioner,* 297 U.S. 129, 134 (1936). This should be particularly persuasive when it is considered that under the regulations applicable in this case, the majority view holds that after the expiration of 10 days all right to administrative review is lost unless an appeal in writing is taken. In this case the petitioner appeared before the clerk of the board and was apparently told that there was no remedy. The record is silent. But, it seems that the registrant did not articu-

late the nature of his objection to the classification at the time he made oral inquiry of the clerk.

It seems difficult to believe that the petitioner had the right to a fair hearing, in view of the fact that he was informed that there was nothing he could do, and the clerk failed to inform him of his right to contact a Government Appeal Agent. The Court, in *Simmons* v. *United States,* 348 U.S. 397, 406 (1955), indicated that a claimant's right to a fair hearing was a "fundamental safeguard".

It is interesting to note that in *United States* v. *Al-Majeid Muhammed, supra,* upon which the Court of Appeals relied and in *Davis* v. *United States,* 374 F. 2d 1 (5th Cir., 1967), which cited *Al-Majeid Muhammed* with approval, that in neither case did the registrant make any indication whatsoever of his objection to the classification within the ten day period, contrary to the instant case; also, in both of these cases of late objectors the Court in passing indicated a lack of merit in the registrant's contention as to his conscientious objections. The petitioner in this case returned the form SSS 150 to the local board on July 26, 1966, and on the same date was notified that his classification would not be reopened. No where in the record is there any substantial reference as to the merit of the petitioner's claim.

Though it be conceded that an orderly method for determining which draft registrants are entitled to exemption as conscientious objectors, it is difficult to believe that strict adherence to a rule requiring notice of appeal in writing within ten days does not affront due process concepts in face of the fact that the registrant appeared in person within the prescribed time and indicated his dissatisfaction with his classification.

Is the benefit of the exemption to be granted solely to the well educated and well advised, and to be systematically denied to the unsophisticated, the untutored, or the unintelligent. This Court should grant Certiorari to remedy such an abuse.

CONCLUSION

This petition should be granted for one or more of the reasons heretofore stated.

Respectfully submitted,

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APPENDIX